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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/630,896	08/02/2000	Timothy J. Moulsley	1999P00481 US	7981

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS
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EXAMINER	
GREY, CHRISTOPHER P	
ART UNIT	PAPER NUMBER
2474	

NOTIFICATION DATE	DELIVERY MODE
12/12/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	09/630,896	MOULSLEY ET AL.	
	Examiner	Art Unit	
	CHRISTOPHER GREY	2474	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 November 2011*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on _____; the restriction requirement and election have been incorporated into this action.

4)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

5)☒ Claim(s) *15,18,19,30 and 33-35* is/are pending in the application.

5a) Of the above claim(s) _____ is/are withdrawn from consideration.

6)☐ Claim(s) _____ is/are allowed.

7)☒ Claim(s) *15,18,19,30 and 33-35* is/are rejected.

8)☐ Claim(s) _____ is/are objected to.

9)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

10)☐ The specification is objected to by the Examiner.

11)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

12)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claim 15 have been considered but are moot in view of the new ground(s) of rejection.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to

be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claims 15, 18, 19, 30, 33-35 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 of U.S. Patent No. 6,708,037 in view of Han (US 6,973,062) and Blakeney (US 5,638412) in view of Khan (US 6400954.

Regarding claim 15, U.S. Patent No. 6,708,037 teaches a radio communication system, comprising: a primary station operable to periodically transmit a random access channel status message **(Claim 1, primary station signaling availability periodically)**,

a plurality of secondary stations operable to receive the random access channel status message **(Claim 1, notice secondary stations)**,

U.S. Patent No. 6,708,037 does not specifically disclose the status message including an indicated highest available data rate on a plurality of available random access channels; and wherein each secondary station is further operable to determine which random access channel to request based on the random access channel status message: and wherein the highest available data bit rate of the random access channel status message is indicated for each of the plurality of available random access

channels in order to enable each secondary station to determine which random access channel to request.

Han discloses periodically transmitting the status message **(Column 3, notice periodically broadcasting**) including information of a plurality of random access channels **(Column 4 lines 1-10, notice availability of Walsh code classes is indicated by bits in figure 3, where each class represents a transmission rate according to Column 3 lines 60-65,)**; and wherein each secondary station is further operable to determine which random access channel to request based on the random access channel status message **(Column 5 lines 40-47, where the mobile terminals implement call access request based on the state of Walsh codes received)**: and wherein the information is used in order to enable each secondary station to determine which random access channel to request **(Column 5 lines 40-47, notice mobile makes access request depending on availability of Walsh codes)**.

It would have been obvious to one of the ordinary skill in the art at the time of the invention was disclosed to modify the radio communication system of U.S. Patent No. 6,708,037, as taught by Han, since stated in Column 2 lines 44-48 of Han, that such a modification will decrease overhead for service negotiation, thereby decreasing interference due to unnecessary communication in the radio channel.

The combined teachings of U.S. Patent No. 6,708,037 and Han do not specifically disclose the status message including an indicated highest available data rate and the highest available data bit rate of the random access channel status message is indicated for each of the plurality of available access channels.

Blakeney discloses the status message including an indicated highest available data rate and the highest available data bit rate of the random access channel status message is indicated for each of the plurality of available access channels **(Column 7 lines 19-44, notice negotiation message includes a field that specifies rates and an indication of each rates availability/accommodation, where the rates range from the highest to the lowest based on the indication).**

It would have been obvious to one of the ordinary skill in the art at the time of the invention was disclosed to modify the combined teachings of U.S. Patent No. 6,708,037 and Han, as taught by Blakeney, since stated in Column 1 of Blakeney, that such a modification will provide service negotiation between devices attempting to communicate, where these devices may have differing capabilities

The combined teachings disclose the highest indicated available data rate of a t least one available RACH (Blakeney: Column 7).

The combined teachings do not specifically teach wherein the indicated highest available data rate of at least one available random access channel is lower than a highest data rate that could be made available to the at least one random access channel, based on a potential future demand for capacity.

Khan discloses wherein the indicated highest available data rate of at least one available random access channel is lower than a highest data rate that could be made available to the at least one random access channel, based on a potential future demand for capacity **(Column 5 line 65-Column 6 line49 and see claim 19, which**

shows that each service class pertains to a different bandwidth/rate, where each rate is a portion/percentage of a total allocatable bandwidth).

It would have been obvious to one of the ordinary skill in the art at the time of the invention was disclosed that the class and rate indications of the combined teachings are portions of the available capacity, since stated in Column 1 of Khan that such a modification would increase system capacity without reducing communication quality.

Regarding claim 18, The combined teachings teach wherein the random access channel status message is transmitted by said primary station as a part of a paging indicator channel **(Han: Column 4 lines 44-46, notice paging channel)**.

Regarding claim 19, The combined teachings teach wherein the random access channel status message is transmitted by said primary station as a part of an acquisition indicator channel **(Han: Column 4 lines 44-46, notice BCCH channel)**.

Regarding claims 30, 33, 34, 35 and 41, these claims recite similar limitations, so have therefore been addressed similarly to those claims rejected above (i.e. U.S. Patent No. 6,708,037 shows method claims in claim 7).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 15, 18, 19, 30, 33-35 rejected under 35 U.S.C. 103(a) as being unpatentable over Han (US 6,973,062) in view of Blakeney (US 5,638412) in view of Khan (US 6400954).

Regarding claim 15, 30, Han discloses a radio communication system, comprising: a primary station message **(See figure 1 and 3, BS= primary)** operable to periodically **(Column 3 lines 1-10 shows periodically)** transmit a random access channel status message **(Figure 2, shows status message indicating availability)**, the status message including information **(Column 4 lines 1-10, notice availability of Walsh code classes is indicated by bits in figure 3, where each class represents a transmission rate according to Column 3 lines 60-65,)**;

a plurality of secondary stations operable to receive the random access channel status message **(Column 3 lines 5-15, BS broadcast call access information to terminals);**

and wherein each secondary station is further operable to determine which random access channel to request based on the random access channel status message **(Column 5 lines 40-47, where the mobile terminals implement call access request based on the state of Walsh codes received)**:

and wherein information is used in order to enable each secondary station to determine which random access channel to request **(Column 5 lines 40-47, notice mobile makes access request depending on availability of Walsh codes)**.

Han does not specifically disclose the status message including an indicated highest available data rate and the highest available data bit rate of the random access

channel status message is indicated for each of the plurality of available access channels.

Blakeney discloses the status message including an indicated highest available data rate and the highest available data bit rate of the random access channel status message is indicated for each of the plurality of available access channels **(Column 7 lines 19-44, notice negotiation message includes a field that specifies rates and an indication of each rates availability/accommodation, where the rates range from the highest to the lowest based on the indication).**

It would have been obvious to one of the ordinary skill in the art at the time of the invention was disclosed to modify negotiation procedure in Han, as taught by Blakeney, since stated in Column 1 of Blakeney, that such a modification will provide service negotiation between devices attempting to communicate, where these devices may have differing capabilities.

The combined teachings disclose the highest indicated available data rate of a t least one available RACH (Blakeney: Column 7).

The combined teachings do not specifically teach wherein the indicated highest available data rate of at least one available random access channel is lower than a highest data rate that could be made available to the at least one random access channel, based on a potential future demand for capacity.

Khan discloses wherein the indicated highest available data rate of at least one available random access channel is lower than a highest data rate that could be made available to the at least one random access channel, based on a potential future

demand for capacity **(Column 5 line 65-Column 6 line49 and see claim 19, which shows that each service class pertains to a different bandwidth/rate, where each bandwidth/rate is a portion/percentage of a total allocatable bandwidth, i.e. a portion is lower than the highest).**

It would have been obvious to one of the ordinary skill in the art at the time of the invention was disclosed that the class and rate indications of the combined teachings are portions of the available capacity, since stated in Column 1 of Khan that such a modification would increase system capacity without reducing communication quality.

Regarding claim 18, 33, The combined teachings teach wherein the random access channel status message is transmitted by said primary station as a part of a paging indicator channel **(Han: Column 4 lines 44-46, notice paging channel)**.

Regarding claim 19, 34, The teach wherein the random access channel status message is transmitted by said primary station as a part of an acquisition indicator channel **(Han: Column 4 lines 44-46, notice BCCH channel)**.

Regarding claim 35, The combined teachings teach wherein the indicated highest available data rate serves to identify whether the corresponding random access channel is available, and identifies a highest available data rate for available channels of the plurality of random access channels **(Han: Column 4 lines 1-10, notice availability of Walsh code classes is indicated by bits in figure 3, where each class represents a transmission rate according to Column 3 lines 60-65, highest class would correspond to MAX bit rate)**.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER GREY whose telephone number is (571)272-3160. The examiner can normally be reached on 10AM-7:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Moe Aung can be reached on (571)272-7314. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher P Grey/
Primary Examiner, Art Unit 2474